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SUPREME COURT OF THE UNITED STATES.

No. 29.

ROBERT SMITH ET AL., PLAINTIFFS IN ERROR,

VERSUS

ISHAM COLEMAN ET AL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF GEORGIA.

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UNITED STATES, DISTRICT OF GEORGIA, IN THE SIXTH CIRCUIT COURT.

The President of the United States, to the judges of the sixth circuit court of the United States, in and for the District of Georgia:

For as much as in the record and proceedings, and also in giving of judgment, in a certain plaint, which was before you or some of you in the said circuit court, between John Doe, on the demise of Robert Smith and others, and Richard Roe, Isham Coleman and others, tenants, in a plea of trespass and ejectment, as it is said, manifest error hath intervened to the great damage of the said Robert Smith and others, as by the complaint it is stated, it being just and proper that the said errors, if any, be duly amended, and

that full and speedy justice be done to the parties aforesaid in this behalf, it is hereby commanded you, that, if judgment be given thereupon, then that you send openly the record and proceedings in the plaint aforesaid, with all things touching the same, and this writ, so that you have the same before the Chief Justice and Associate Justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of the National Government, that the record and proceedings aforesaid being inspected, the said Justices may cause to be done thereupon, for amending the said error, what of right and according to right ought to be done.

Witness the honorable John Marshall, Chief Justice of the United States, at Savannah, this twelfth day of January, being the second Monday thereof, in the year of our Lord one thousand eight hundred and twenty-nine, and the fifty-fourth year of the independence of the United States.

[SEAL.] GEO. GLEN, *Clk.*

R. H. WILDE,
Attorney for plaintiff in error.

UNITED STATES OF AMERICA, DISTRICT OF GEORGIA.

To the honorable the Judges of the sixth circuit court of the United States, to be held in and for the District of Georgia.

The petition of John Doe, who avers himself to be a citizen of, and residing in, the State of Maryland, in the said United States, humbly sheweth, That your petitioner hath been injured by, and sustained damage of, Richard Roe, whom petitioner avers to be a citizen of, and residing in, the State of Maryland aforesaid, on the first day of January, in the year of our Lord one thousand eight hundred and five, in the county of Hancock, in the district of Georgia aforesaid, had demised to your petitioner all that tract or parcel of land, lying and being partly in the county of Hancock, and partly in the county of Washington, between the waters of Buffalo and Ogechee, surveyed for, and estimated at the time of survey to contain four thousand four hundred and forty acres, but actually containing only three thousand three hundred and seventy acres, originally granted to Robert Middleton, on the eighth day of November, in the year of our Lord one thousand seven hundred and eighty-six, bounded, at the time of the original survey, on the west by John Peter Wagnon's land, and on all other sides by vacant land, and now bounded on the west by John Forsyth's land, and on all other sides by unknown land, with the appurtenances; to have and to hold the same to your petitioner, and his assigns, from the said first day of January, in the year first aforesaid, for and during, and until the full end and term of forty years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise your petitioner entered into the said tract or parcel of land, with the appurtenances above mentioned, and became and was thereof possessed for the said term, so to him thereof granted, as aforesaid; and your petitioner being so thereof possessed, the said Richird Roe afterwards, to wit, on the second day of January, in the year of our Lord one thousand eight hundred and five, with force and arms, to wit, with swords, staves, and knives, entered into the said tract or parcel of land, with the appertenances, above mentioned, in which your petitioner was so interested, in manner and for the term aforesaid, and ejected your petitioner from his said farm. And also for that John Patterson, whom your petitioner avers to be

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a citizen of, and residing in, the State Maryland, in the said United States, on the first day of January, in the year of our Lord one thousand eight hundred and nineteen, in the county of Hancock, in the district of Georgia aforesaid, had demised to your petitioner all that other tract or parcel of land, lying and being partly in the county of Hancock, and partly in the county of Washington, between the waters of Buffalo and Ogechee, surveyed for, and estimated at the time of survey to contain four thousand four hundred and forty acres, but actually containing only three thousand three hundred and seventy acres, originally granted to Robert Middleton, on the eighth day of November, in the year of our Lord one thousand seven hundred and eighty-six, bounded, at the time of original survey, on the west by John Peter Wagnon's land, and on all other sides by vacant land, and bounded at present on the west by the honorable John Forsyth's land, and on all sides by the lands of persons unknown to your petitioner, with the appurtenances; to have and to hold the same to your petitioner, and his assigns, from the said first day of January, in the year of our Lord one thousand eight hundred and nineteen, for and during and until the full end and term of twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said last mentioned demise, your petitioner entered into the said tract or parcel of land, with the appurtenances last above mentioned, and became and was thereof possessed for the said term, to him thereof granted as aforesaid; and your petitioner being so thereof possessed, the said Richard Roe afterwards, to wit, on the second day of January, in the year of our Lord one thousand eight hundred and nineteen, with force and arms, to wit, with swords, staves, and knives, entered into the said tract or parcel of land, with the appurtenances, last above mentioned, in which your petitioner was so interested in manner and for the term aforesaid, and ejected your petitioner from his said farm, and other wrongs to your petitioner then and there did, to the great damage of your petitioner, and against the peace of the said United States, wherefore your petitioner saith he is injured by, and sustained damages of, the said Richard Roe, in the sum and to the amount of twenty thousand dollars; and therefore he brings his suit, &c. And your petitioner prays process may issue, requiring the said Richard Roe to be and appear at the sixth circuit court of the United States, to be holden in and for the district of Georgia, then and there to answer your petitioner in an action of ejectment, &c.

RICHARD H. WILDE,
Plaintiff's Attorney.

To Isham Coleman, Wilkinson Wilkins, Archer Averett, Mary Bryant Job Jackson, James Wilkins, William Rachels, James Husk, and Jonathan Baker:

Gentlemen: I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as a casual ejector only, and having no claim to the same, do advise you to appear at the sixth circuit court of the United States, to be held in and for the district of Georgia, at the city of Savannah, on the fourteenth day of December next by some attorney of that court, and then and there, by rule of the same court, to cause yourselves to be made defendants in my stead; otherwise, I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Yours,
RICHARD ROE.

UNITED STATES, DISTRICT OF GEORGIA.

In the sixth circuit court of the United States, for the district of Georgia.

JOHN DOE, on the demise of Robert Smith et al.
vs.
RICHARD ROE, Isham Coleman, and other tenants.
} *Ejectment.*

James Monroe, President of the United States, to the Marshal of the said district of Georgia, greeting:

The defendant Richard Roe is hereby required, personally or by attorney, to be and appear at the sixth circuit court of the United States, to be held in and for the district of Georgia, at the city of Savannah, on the fourteenth day of December, then and there to answer the plaintiff in an action of ejectment, &c., as in default thereof the said court will proceed as to justice shall appertain. Witness the honorable John Marshall, Chief Justice of the said United States, this eighth day of October, in the year of our Lord one thousand eight hundred and twenty-four.

GEO. GLENN, *clk.* [L. S.]

R. H. WILDE,
Plaintiff's Attorney.

Served copies on William Rachels, Mary Bryant, Job Jackson, James Husk, and Isham Coleman, personally; on Archer Everett, by leaving a copy on the premises with Mr. Cooke, the tenant in possession; and on Jonathan Baker, Wilkinson Wilkins, James Wilkins, by leaving a copy at their respective places of residence.

J. S. BEERS,
Deputy Marshal district of Georgia.

October 22, 1824.

RICHARD ROE, ISHAM COLEMAN, and others, tenants, *ads.*
JNO. DOE, ex dem. Robert Smith, and others.
} *Ejectment. Sixth circuit court. United States, district of Georgia.*

It is ordered, by the consent of the attorneys, that William Rachels, Mary Bryant, Job Jackson, James Husks, Isham Coleman, Archer Everett, Jonathan Baker, Wilkinson Wilkins, and James Wilkins, be made defendants instead of the now defendant Richard Roe, and do forthwith appear at the suit of the plaintiff, and forthwith plead thereto not guilty, and upon the trial of the issue confess lease, entry, and ouster, and insist upon the title only.

And the said William Rachels and other defendants, by Seaborn Jones, their attorney, come and defend the wrong and injury, when, &c., and say that they are not guilty of the suppossed trespass and ejectments above laid to their charge, in manner and form as the said John Doe hath above thereof complained against them; and of this they put themselves on the country.

S. JONES,
Defendant's Attorney.

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Consent rule and plea filed 18th March, 1825.

GEO. GLEN, *Clk.*

And the said plaintiff doth the like.

R. H. WILDE,
Plaintiff's Attorney.

District of Georgia, Sixth Circuit Court United States.

ROBERT SMITH and others, plaintiffs in error, *vs.* ISHAM COLEMAN and others, defendants in error. } *Writ of error.*

You are hereby cited and admonished to appear to a writ of error filed in the above cause on behalf of Robert Smith and others, plaintiff in error, which writ and the assignment of error are filed in the office of the clerk of the circuit court of the United States for this district; and you are further cited and admonished to be and appear before the Justice of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of the National Government, and then and there to defend the said writ of error. And I do hereby certify that the said Robert Smith hath given bond and security for the prosecution of the said writ of error to effect.

Dated at Charleston, this thirtieth day of November, in the year of our Lord one thousand eight hundred and twenty-nine.

WILLIAM JOHNSON,
Associate Justice Sup. Ct. U. S.

To ISHAM COLEMAN, and others,
Defendants in error.

Served William Rachels and Jonathan Baker, by leaving a copy at their notorious places of abode, and served James Husk and Job Jackson, personally, the 9th January, 1830; and the balance of the defendants are not to be found.

LINDSAY JOHNSON,
D. M. U. S. D. G.

And the issue aforesaid, so joined as aforesaid, in manner and form aforesaid, between the parties aforesaid, came on to be tried at the November term of the said circuit court of the United States for the district of Georgia, at Milledgeville, in the said district, before the honorable William Johnson, Associate Justice of the Supreme Court, when the said plaintiff, to maintain the said issue, offered in evidence an exemplification, under the seal of the State of Georgia, of a grant or patent to Robert Middleton, which is in the words, letters, and figures following, to wit:

Received one dollar. GEO. R. CLAYTON, *Treas'r.*

STATE OF GEORGIA.

By his excellency John Clark, Governor and Commander in Chief of the army and navy of this State, and of the militia thereof. To all to whom these presents shall come:

Know ye, that John Milton, Esquire, who certifies the annexed copy of a grant, was, at the date of his certificate, Secretary of State, and Daniel Sturgis, Esq., who certifies the copy of the plat thereof, is Surveyor General of this State. Therefore all due faith, credit, and authority are and ought to be had and given to their certificates as such.

In testimony whereof, I have hereunto set my hand, and caused the great seal of this State to be put and affixed. Done at the State-house in Milledgeville, this eighth day of May, in the year of our Lord eighteen hundred and twenty, and of the independence of the United States of America the forty-fourth.

By the Governor,

[SEAL.] AB'R HAMMOND,
Secretary of State.

Robert Middleton's 4,440 acres of piney land, between the waters of Buffalo and Ogechee*.

GEORGIA, GREENE COUNTY—Warrant dated 3d July, 1786, and surveyed 7th July, 1786, by Robert Flournoy, D. Sur. Certified by

WILLIAM GREER, *S. G. C.*

SUR. GEN. OFFICE, *8th May*, 1820—The above is a true copy of the record, book N, page 201.

DAN'L STURGIS, *Sr. Gen'l.*

STATE OF GEORGIA.

By the honorable Edward Telfair, Esquire, Captain General, Governor, and Commander in Chief, in and over the said State. To all to whom these presents shall come, greeting:

Know ye, that in pursuance of the act for opening the land office, and by virtue of the powers in me vested, I have, by and with the advice and consent of the honorable the Executive Council, given and granted, and by these presents, in the name and behalf of the said State, do give and grant, unto Robert Middleton, his heirs and assigns for ever, all that tract or parcel of land containing four thousand four hundred and forty acres, situate, lying, and being in the county of Greene, in the said State, and butting and bounding west by John Peter Wagnon's land, and on all other sides by vacant land, having such shape, form, and marks, as appear by a plat of the same hereunto annexed, together with all and singular the rights, members, and appurtenances thereof whatsoever, to the said tract or parcel of land belonging, or in any wise appertaining; and also all the estate, right, title, interest, claim, and demand of the State aforesaid, of, in, to, or out of the same; to have and to hold the said tract or parcel of land, and all and singular the premises aforesaid, with their and every of their rights, members, and appurtenances, unto the said Robert Middleton, his heirs and assigns, to his and their own proper use and behoof for ever, in fee simple.

Given under my hand in Council, and the great seal of the said State, this eighth day of November, in the year of our Lord one thousand seven hundred and eighty-six, and in the eleventh year of American independence.

EDWARD TELFAIR.

Signed by his honor the Governor, in Council, the 8th day of November, 1786.

J. MERIWETHER, *C. C.*

Registered the 13th November, 1786.

Georgia, Secretary's Office, 13th May, 1791.

The above is a true copy, taken from the original register, deposited in my office, in book L. L. L. folio 180.

JNO. MILTON, *Sec'y.*

*For plat see original.

To the admissibility of which evidence, the defendants aforesaid, by their counsel aforesaid, objected that the said exemplification could not be received until the original grant or patent was proved to be lost or destroyed, or the non-production thereof otherwise legally accounted for, which objection the said court sustained, to which decision the said plaintiff by his counsal excepts.

And the said plaintiff then proved that a notice had been served on the opposite party to produce the said original grant or patent.

And the said plaintiff then offered as evidence to the said court, for the purpose of proving the loss or destruction of the said original grant or patent, an affidavit, which is in the words following to wit:

District of Maryland, city of Baltimore, to wit:

Personally appeared before me, Elias Glenn, judge of the district court of the United States in and for the district of Maryland, Robert Smith, Esquire, of Baltimore city, and State of Maryland, gentleman, who being duly sworn, saith that he has not in his possession, power, or custody, an original grant from Edward Telfair, Governor of the State of Georgia, to Robert Middleton, for four thousand four hundred and forty acres of land, in the county of Greene, bounded north by John P. Wagnon's land, and on all other sides by vacant land, dated the eighth day of November, seventeen hundred and eighty-six, and that this deponent knoweth not where the said original grant is. And this deponent further saith, that he hath made diligent search among his papers for the said original grant, and that the same could not be found.

R. SMITH. [SEAL.]

Given under my hand and seal this sixteenth day of March, in the year eighteen hundred and twenty seven.

ELIAS GLENN, [SEAL.]

And the said plaintiff further called a witness, who proved that he had compared the exemplification of the grant or patent aforesaid with the register of grants in the office of the Secretary of State of the State of Georgia, and the book or register of surveys in the office of Surveyor General of the State of Georgia, and that the exemplification aforesaid was a true copy from the said registers of grants and plats in the said offices respectively; and the said witness further proved, that he had made search for the original grant or patent in the said office, and that the same was not there to be found; and the said witness further proved, that he had made diligent search in the clerk's office of Richmond county, among the grants therein, but said original grant was not there to be found; that several of the parties through whom the title was transmitted, from the grantee to the lessor of the plaintiff, formerly resided in that county; that said witness had inquired for said grant of the executors and heirs of Thomas Glascock, one of the said parties formerly holding or claiming title under the said grant, but could obtain no information relative to the same. That said witness caused an advertisement for the recovery of said grant, on the procurement of information relative thereto, to be inserted in the newspapers for some length of time, but without effect. That the said witness had made diligent search among the papers of one George Walker, now and long since deceased, who appeared once to have had some of the muniments of title of the lessor of the plaintiff in his possession, or been consulted as counsel in relation thereto, but said original grant or patent, could not there be found. And